

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

West Virginia American Water Co.,

Employer,

and

Case No. 09-RC-219179

Utility Workers United Association, Local 537,

Petitioner,

and

Utility Workers Union of America, AFL-CIO, CLC  
and its Local 537,

Intervenor.

**INTERVENOR'S REQUEST FOR REVIEW**

Comes now the Intervenor, Utility Workers Union of America, AFL-CIO, CLC and its Local 537 ("Local 537"), by and through undersigned counsel, and, pursuant to Section 102.67 of the Board's Rules and Regulations, 29 CFR § 102.67, requests review of Regional Director Garey Lindsay's May 18, 2018 Decision and Direction of Election in the above-captioned matter.<sup>1</sup>

**INTRODUCTION AND SUMMARY OF ARGUMENT**

There are compelling reasons to grant this Request for Review, as the Regional Director's Decision raises a substantial question of law and policy: Can a Regional Director usurp a federal court's authority in a legal area—interpreting and applying the trusteeship provisions of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§ 461-66—entrusted exclusively to federal court jurisdiction?

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<sup>1</sup> The Employer also filed a Request for Review in this matter on May 24, 2018.

On March 18, 2018, the Utility Workers Union of America (“the National Union”) decided to place its Local 537 in trusteeship, effective immediately on March 19, 2018, in accordance with the trusteeship provisions of the National Union Constitution and the LMRDA. The former officers and former counsel for Local 537 refused to recognize the legal validity and effectiveness of the trusteeship, in large part because they contended that Local 537 successfully disaffiliated from the National Union based on a membership vote conducted on the very same day that the trusteeship went into effect and formed a new union called “Utility Workers United Association, Local 537”—a new union then characterized by former Local 537 President Keith Booth as “the same organization . . . the only difference being that, as a result of this membership [disaffiliation] vote, we are no longer associated with the Utility Workers Union of America, AFL-CIO (National Union), and we have simply changed our name.” Given this refusal, the National Union promptly filed an action in federal court in Pittsburgh to enforce the trusteeship—asserting in its federal court complaint and in its papers filed in support of preliminary injunctive relief that the trusteeship was legally valid and effective and that, by operation of the trusteeship, *the purported disaffiliation was legally invalid and ineffective*. See UWUA v. Booth, et al., Civil Action No. 18-00398 (W.D. Pa.).<sup>2</sup>

Former counsel for Local 537 (now counsel for the Petitioner here), along with certain Local 537 members, then sought to end run the trusteeship enforcement litigation and use the Board’s processes to serially affirm the purported disaffiliation by filing three representation petitions,

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<sup>2</sup> The federal court later entered a preliminary injunction in favor of the National Union in a form consented to by the parties to the litigation. See Intervenor’s Motion to Dismiss, Attachment 7.

including the instant one, seeking to have employees in three bargaining units currently represented by Local 537 decide whether they wanted to be represented by Local 537's "mirror image," the purportedly disaffiliated Utility Workers United Association, Local 537.<sup>3</sup>

The Intervenor sought to dismiss the instant petition, arguing in its May 8, 2018 pre-hearing brief: "The straightforward legal basis for dismissal of the RC Petition is that th[e] legal dispute between the National Union and Local 537's former officers [over whether Local 537's purported disaffiliation from the National Union was legally valid and effective in light of the trusteeship, thus rendering the purportedly disaffiliated Petitioner the legally "proper" collective bargaining representative of the unit employees as claimed by Petitioner,] does not raise a genuine 'question concerning representation' that is within the proper province of the Board. Rather, it raises issues of federal trusteeship law that are within the proper province of the Federal District Court for the Western District of Pennsylvania in the pending trusteeship enforcement action brought by the National Union against Local 537's former officers." Rather than engage with this argument, the Regional Director cavalierly rejected it in a cursory footnote.

Without any discussion of the LMRDA's trusteeship provisions or the specifics of the federal court trusteeship enforcement litigation, the Regional Director observed that the consented-to

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<sup>3</sup> Two petitions were filed in Region 6 (Case 06-RC-218209 and Case 06-RC-218527) for two separate units at Pennsylvania American Water Co., which, like the employer here, is a subsidiary of American Water Works Company, Inc. There, as here, the purportedly disaffiliated Utility Workers United Association, Local 537 seeks to replace Local 537 as the employees' exclusive representative. And, counsel for the Petitioner here also is counsel for the petitioners in these two cases. The Regional Director for Region 6 issued similar separate orders in each case, dated April 18, 2018 and April 23, 2018 respectively, partially granting the employer's motions to suspend the election deadlines and postponing the hearings indefinitely. In both orders, the Regional Director stated that the indefinite postponement is: "In order to permit for additional time to determine the impact, if any, of the pending litigation in the United States District Court for the Western District of Pennsylvania on the processing of the instant petition."

preliminary injunction enforcing the trusteeship did not by its terms prohibit the Petitioner from filing the instant petition or the Board from processing it—a meaningless truism given that the instant petition postdates the entry of the consented-to preliminary injunction, and the National Union had no inkling that Petitioner and its counsel would attempt this end run around the trusteeship enforcement litigation when it negotiated the terms of that preliminary injunction. The Regional Director then gave the Intervenor’s argument the back of his hand, concluding, without any elaboration: “Moreover, I find that there are no policy reasons that would otherwise warrant dismissing the petition or holding it in abeyance pending the completion of any Court proceedings.” Yet later in his Decision, the Regional Director himself recognized the centrality of the disaffiliation issue to his ultimate determination, stating: “Notably, the record shows that the unit employees voted to be represented by Petitioner when they voted to disaffiliate from the Intervenor.” See Decision, at p. 4.

The Board certainly has primary jurisdiction over representation issues, but it cannot exercise that jurisdiction in a vacuum, without proper regard for the dictates of other applicable federal statutes. As the Board acknowledged in IBEW, Local 48 (Kingston Constructors, Inc.), 332 NLRB 1492, 1501 (2000): “The Supreme Court in Southern Steamship Co. expressly stated that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.” (footnote citation and internal quotation marks omitted). See also e.g. Kingston Constructors, 332 NLRB 1492, 1501 (2000) (the Board is obligated to defer to the decisions of other tribunals interpreting

and applying other statutes over which the Board has no authority or institutional expertise); Can-Am Plumbing, Inc. v. NLRB, 321 F.3d 145, 153 (D.C. Cir. 2003) (same).

Here, it would be highly improper for the Board single-mindedly to process a representation petition when doing so would usurp a federal court's exclusive jurisdiction over trusteeship enforcement litigation. The Board should therefore grant Review, set aside the Regional Director's Decision and Direction of Election, dismiss the instant petition, and remit the parties to this dispute over the legal validity and effectiveness of a purported disaffiliation dressed up as a representation petition to the federal district court for definitive resolution of that dispute. This result would not only properly respect the jurisdiction of the federal court; it would also assure uniform administration of the Act, because it would comport with the indefinite hearing postponement by the Regional Director for Region 6 in the two cases involving the same Petitioner and Intervenor similarly affected by the trusteeship enforcement litigation.

### **ARGUMENT**

Although framed as a representation petition presenting a genuine "question concerning representation," Petitioner's real contention in this proceeding is that Local 537 has successfully disaffiliated from the National Union and formed a new union called "Utility Workers United Association, Local 537" that is the legally "proper" collective bargaining representative of the unit employees, in lieu of the trustee Local 537. See Intervenor's Motion to Dismiss, at p. 6 (quoting Petitioner's contention on this point). But as we demonstrate below, the issue of whether Local 537 has successfully disaffiliated from the National Union—thus making Petitioner rather than the trustee Local 537 the legally "proper" collective bargaining representative of the employees—is the very issue that stands at the center of the National Union's federal court lawsuit to enforce its trusteeship over Local 537. Because the federal court

has exclusive jurisdiction under the LMRDA to decide this issue, the Regional Director should have dismissed the instant petition and remitted the parties to the federal court litigation for a definitive resolution of that issue. His failure to do so was clear error that should be reversed.

1. To place the trusteeship enforcement litigation and the centrality of the disaffiliation issue to that litigation in proper context, we will first briefly review the chronology leading to the instant petition. The National Union and many of its affiliated locals, including Local 537, represent various bargaining units of employees of American Water Works Company, Inc, a/k/a American Water Works Service Company, Inc. (“American Water”) and its subsidiaries. The American Water bargaining units represented by Local 537 include the two units in Pennsylvania that are at issue in Cases 06-RC-218209 and 06-RC-218527, and the unit in West Virginia at issue here. Since the 1980s, the National Union has led a consortium of labor unions known as the Union National Benefits Committee that engages in company-wide benefits bargaining with American Water on behalf of union-represented American Water employees across the country, including the American Water employees represented by Local 537. These national benefits negotiations have typically culminated in the parties agreeing to a National Benefits Agreement (“NBA”) covering certain benefits including pension and health.<sup>4</sup>

Local 537 has made efforts over the years to disrupt and undermine the National Union’s established framework for negotiating an NBA with American Water by, among other things, insisting to American Water and its subsidiaries that they are obligated to bargain the benefits issues covered by the NBA with Local 537 on a unit-by-unit basis, rather than on a nationwide

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<sup>4</sup> A brief outline of this longstanding bargaining arrangement is provided by the Administrative Law Judge in American Water Works Company, Inc., 361 NLRB 64, 66 (2014).

basis. With the current NBA set to expire in July 2018 and negotiations for a renewed agreement scheduled to commence in mid-April, Local 537's efforts at disrupting and undermining the National Union's established framework for negotiating an NBA with American Water intensified, leading the National Union, on March 18, 2018, to decide to place Local 537 in trusteeship, effective immediately on March 19, 2018.

Subsequent to the imposition of the trusteeship, Kevin Booth, the former President of Local 537, wrote to the President of West Virginia American Water, and advised him that on the very same day that the trusteeship went into effect, Local 537 had held a membership vote in which the membership had decided to disaffiliate from the National Union and "become" a new association called "Utility Workers United Association, Local 537." The letter went on to state, with regard to this newly-formed association: "We are the same organization which you have recognized and with which you dealt in the past with the exact same dues structure, the only difference being that, as a result of this membership vote, we are no longer associated with the Utility Workers Union of America, AFL-CIO (National Union), and we have simply changed our name." See Intervenor's Motion to Dismiss, Attachment 4.

On its face, this letter—which also was sent to the Presidents of the other American Water subsidiaries in Pennsylvania and Maryland whose employees Local 537 represents—was a transparent effort to persuade the Employer that the alleged disaffiliation did not create a change in the identity of the bargaining representative that would trigger a question concerning representation or relieve the Employer of its obligation to bargain. Along these same lines, counsel for Petitioner followed up with a letter to the National Union President contending that the trusteeship was legally invalid and "ineffective" due to Local 537's purported disaffiliation. See Intervenor's Motion to Dismiss, Attachment 5.

Faced with the former officers' unwillingness to comply with the trusteeship on the ground that the purported disaffiliation rendered that trusteeship legally invalid and "ineffective," the National Union filed an action in federal court in Pittsburgh to enforce the trusteeship and a motion for preliminary injunctive relief. In its brief supporting that motion,<sup>5</sup> the National Union argued that it was *the purported disaffiliation* and *not* the trusteeship that was legally invalid and "ineffective," for at least two reasons. First, the trusteeship had gone into effect prior to the purported disaffiliation vote, thereby rendering that purported disaffiliation vote a legal nullity. See Brief, at pp. 16-17. Secondly, the purported disaffiliation vote had not been conducted in compliance with applicable due process requirements in any event. See id., at pp. 17-20.

Tacitly demonstrating their inability to successfully counter these arguments by the National Union respecting the legal invalidity and ineffectiveness of the purported disaffiliation, the former officers consented to the entry of a preliminary injunction by the federal court enforcing the trusteeship and preventing Local 537's former officers "and each and every person acting at the direction of or in concert with them" from, inter alia, "interfering in any manner with the trusteeship . . . ." See Intervenor's Motion to Dismiss, Attachment 7.

2. Having thus apparently concluded that their legal strategy of fending off the trusteeship in federal court was likely to fail, the disaffiliation proponents and their counsel then changed their legal tactics and enlisted the Board as the alternative vehicle through which they would seek to achieve their ultimate goal of disaffiliation. Specifically, the disaffiliation proponents and their counsel backtracked from their initial claim that the newly-formed "Utility Workers United Association, Local 537" is the "same organization" as Local 537; asserted instead that

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<sup>5</sup> The brief is publicly available on the federal court's electronic docket, but for the Board's convenience, we attach a copy hereto as Exhibit A.



Utility Worker United Association, Local 537 was in fact a different entity from Local 537; and sought to have that ostensibly different entity compete with Local 537 in representation elections in three bargaining units currently represented by Local 537. In Cases 06-RC-218209 and 06-RC-218527, the petitions are for elections among units of Pennsylvania American Water employees, and, in the instant case, the petition seeks an election among employees of West Virginia American Water. On their face, all three petitions are nothing but an elaborate ruse aimed at having the Board resolve, in the guise of a Board-conducted representation election, the key legal issue presented in the federal court trusteeship enforcement litigation: to wit, the legal validity and effectiveness of the purported disaffiliation of Local 537 from the National Union.<sup>6</sup>

3. Petitioner's counsel's statements and evidentiary submissions at the May 8, 2018 hearing in this proceeding confirm in no uncertain terms that what the Petitioner really is seeking here is the Board's affirmance of the Petitioner's legal position that Local 537 successfully disaffiliated from the National Union on March 19, 2018, thereby rendering the Petitioner the legally "proper" collective bargaining representative of the employees, in lieu of the trustee Local 537.

Near the outset of the hearing, Petitioner's counsel specifically relied on the purported disaffiliation's asserted effectiveness to contend that the Petitioner is a distinct labor organization, stating: "[M]y position here is any time you have a[ ] disaffiliation what happens is the old union, so to speak, becomes the new union, because the employees move from one entity to another, *and that's what happened here.*" (Tr. at 38) (emphasis added). All of the evidence that Petitioner's counsel then went on to present on this labor-organization-status issue related to

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<sup>6</sup> As noted earlier, the Regional Director for Region 6, not taken in by this tactic, has issued orders in Case 06-RC-218209 and Case 06-RC-218527 postponing the hearings indefinitely.

actions taken by Local 537's former officers in furtherance of their disaffiliation plan, including evidence of a January 20, 2018 Local 537 Executive Board meeting in which, as Petitioner's counsel put it: "It was determined to form the [new] labor organization *in the event that the membership decided to disaffiliate from the national union.*" (*Id.* at 60) (emphasis added). Along the same lines, Petitioner's counsel acknowledged that the Petitioner's governing documents were "virtually identical" to Local 537's governing documents (*id.* at 59)—the only relevant difference being, upon inspection, *the lack of any textual reference to an affiliation with the National Union.* And, in his closing argument, Petitioner's counsel aptly and revealingly characterized the Petitioner as "the mirror image of Local 537." (*Id.* at 132).

4. The Regional Director, when presented with the foregoing details of the trusteeship enforcement litigation and Petitioner's counsel's own highly-revealing statements and evidentiary submissions at the hearing, should readily have seen through the Petitioner's elaborate ruse and dismissed the petition as an improper effort to end run the federal litigation and have the Board usurp the federal court's exclusive jurisdiction to decide the disaffiliation issue squarely presented by that litigation. However, the Regional Director inexplicably ignored these matters, cavalierly denied the motion to dismiss in a cursory footnote, and proceeded to direct an election. Even more inexplicably and perversely, the Regional Director *relied on and assumed the legal effectiveness of the purported disaffiliation vote* in justifying his conclusion to proceed with the election, stating: "Notably, the record shows that the unit employees voted to be represented by Petitioner when they voted to disaffiliate from the Intervenor." *See* Decision, at p. 4. This was a manifest—and manifestly inappropriate—usurpation of the federal district court's exclusive jurisdiction to determine the legal effectiveness of the disaffiliation vote under the LMRDA's trusteeship provisions.

5. The Regional Director’s error in dismissing the relevance of the federal court trusteeship enforcement litigation—and then proceeding effectively to decide in Petitioner’s favor the disaffiliation issue at the heart of that federal court litigation—is made all the more manifest by a recent filing by Petitioner’s counsel on behalf of the Defendants in the litigation that postdates the Regional Director’s Decision.

Specifically, on May 22, 2018, Petitioner’s counsel, who is representing Defendant Local 537 and its former officers in the trusteeship enforcement litigation, filed an Answer and Defenses with the federal court presiding over that litigation.<sup>7</sup> In this recent filing, Petitioner’s counsel takes issue with the Complaint’s allegations concerning the timing of, and defects in, the disaffiliation process, *and asserts the purportedly successful disaffiliation as an affirmative defense to the enforcement of the trusteeship.*

In the former regard, Petitioner’s counsel avers on behalf of Defendants that the March 19, 2018 membership meetings held by Local 537 were “for the express purpose of voting upon the question of disaffiliating from the UWUA, which is a purpose that the alleged trusteeship and the trustee was powerless to stop.” See Answer and Defenses, at p. 10 ¶ 40. He then continues: (a) “[B]y way of further averment, the aforesaid e-mails [providing notification of the trusteeship] were not received until the vote by the members of Local 537 to disaffiliate from the UWUA had been completed,” see id. at p. 11 ¶ 41; (b) “By way of further averment, the communication by Mr. Booth expressed accurately that the members of Local 537 had voted to disaffiliate from the UWUA and to join an independent union, which they had a right to do, irrespective of the validity of the alleged trusteeship,” see id. at p. 11 ¶ 43; (c) “It is denied that the disaffiliation

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<sup>7</sup> This recent filing is publicly available on the federal court’s electronic docket, but for the Board’s convenience, we attach a copy hereto as Exhibit B.

vote failed to comply with either the constitution and bylaws of Local 537. That constitution and bylaws do not deal with disaffiliation attempts. The disaffiliation vote complied with the due process requirements of the LMRDA because it was occurred at meetings where secret ballots were conducted upon prior notice to all members,” see id. at p. 11 ¶ 45; and (d) “By way of further averment, the imposition of a trusteeship, no matter when it occurred, could not prevent union members from voting to disaffiliate from the UWUA,” see id. at p. 12 ¶ 46.

In the latter regard, Petitioner’s counsel’s recent filing asserts, as a “Seventh Defense” on behalf of the Defendants: “Pursuant to procedures initiated on January 20, 2018, the process of the members of Local 537 deciding whether to disaffiliate from the UWUA and its Local 537 and to affiliate with a separate labor organization known as Utility Workers United Association, Local 537 (“the Association”) were properly commenced. *These procedures were properly conducted and they were successfully completed on March 19, 2018 with a vote to disaffiliate from the UWUA’s Local 537 and to affiliate with the Association.* The commencement of those procedures was known to the UWUA by March 14, 2018. *By virtue thereof,* the claims of the UWUA as set forth in its complaint fail to state a cause of action against the Defendants.” See Answer and Defenses, at p.14 (emphasis added). Along the same lines, the recent filing asserts, by way of additional defenses to the National Union’s trusteeship enforcement action, that: (a) “The imposition of the trusteeship by the UWUA is legally insufficient to prevent or reverse a vote of members of its local union to disaffiliate from the UWUA,” see id., at p. 15 (Eighth Defense); (b) the trusteeship is invalid and ineffective because it allegedly “occurred after the commencement of the process of disaffiliation,” see id., at p.17 (Seventeenth Defense); and (c) the trusteeship is invalid and ineffective because the “true reason” behind the trusteeship was to

prevent a disaffiliation, and “[i]mposition of a trusteeship to prevent a disaffiliation is not permitted by law,” see id., at p.18 (Nineteenth Defense).<sup>8</sup>

The foregoing averments and defenses in Petitioner’s counsel’s recent filing serve to confirm, in the clearest possible terms, the Intervenor’s point that the issue of the legal validity and effectiveness of the purported disaffiliation of Local 537 from the National Union stands at the center of the National Union’s federal court lawsuit to enforce its trusteeship over Local 537. At the same time, they make all the more manifest the impropriety of the Regional Director’s decision effectively to decide that disaffiliation issue in Petitioner’s favor, thereby usurping the federal court’s exclusive jurisdiction over that trusteeship-related LMRDA issue.

6. To recap the situation at hand, a trustee Local Union purports to disaffiliate from its National Union, and represents to employers with whom it has collective bargaining agreements that it is the identical entity as before, simply unaffiliated. Faced with the Local’s continued insistence that it has successfully disaffiliated, and the instability in collective bargaining relationships that this insistence engenders, the National Union sues to enforce the trusteeship, and a consented-to preliminary injunction is entered enforcing the trusteeship, with the former officers and their counsel continuing to contend, in the ongoing trusteeship litigation, that the purported disaffiliation defeats the trusteeship. Simultaneously, while maintaining that the purportedly successful disaffiliation is a complete defense to the National Union’s trusteeship enforcement action, the same counsel representing the Defendants in that action files

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<sup>8</sup> In an act of great irony and chutzpah, Petitioner’s counsel’s recent filing also asserts, as yet another defense to the National Union’s trusteeship enforcement action, the Regional Director’s findings in Petitioner’s favor in the instant representation proceeding. See Answer and Defenses, at p. 15 (Tenth Defense).

representation petitions in the name of the purportedly disaffiliated entity seeking to have the Board conduct elections with its “mirror image”—the trustee Local Union.

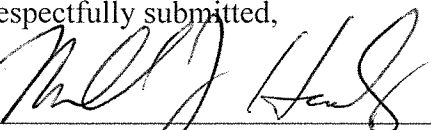
Transparently in these circumstances, the representation petitions constitute a thinly-veiled effort to have the Board conduct, piecemeal, a series of votes designed solely to affirm or ratify a purported disaffiliation—a purported disaffiliation the validity and effectiveness of which is the central legal issue in a trusteeship enforcement action pending in federal district court in Pittsburgh. Rather than recognize this effort to end run the federal litigation for what it is and stay his hand in deference to the federal district court’s exclusive jurisdiction over trusteeship-related LMRDA issues, the Regional Director ignored the entire factual context and proceeded to direct an election between the two “mirror image” entities claiming to be the legally “proper” representative of the bargaining unit employees based on sharply contrasting views on whether—on a proper interpretation and application of the LMRDA’s trusteeship provisions—the National Union’s trusteeship over Local 537 trumps the purported disaffiliation or vice versa. Nothing the Regional Director cited in support of his Decision—certainly not East Dayton Tool & Die Co., 194 NLRB 266 (1972), where there was no ongoing federal litigation of a matter exclusively committed to the jurisdiction of the federal courts—comes even close to justifying the wrongful supplanting of the federal court here.


### **CONCLUSION**

The petitions here and in Region 6 are nothing but a poorly camouflaged effort to manufacture a ratification vote on disaffiliation in the guise of an alleged contest between the trustee (and still-affiliated) Local 537 and the “mirror image” (and purportedly disaffiliated) Utility Workers United Association, Local 537. But the question of whether the purported disaffiliation succeeded and trumps the National Union’s trusteeship over Local 537 is precisely

the issue at the center of the pending federal court trusteeship enforcement litigation in Pittsburgh—a question that has been answered preliminarily at least *in favor of* the trusteeship and *against* the purported disaffiliation. The Board should acknowledge its proper role and cede resolution of this trusteeship-related LMRDA issue to the federal district court where it belongs and where it currently is pending. In short, the Board should grant this Request for Review, set aside the Regional Director’s Decision and Direction of Election, dismiss the instant petition, and remit the parties to this dispute over the legal validity and effectiveness of a purported disaffiliation dressed up as a representation petition to the federal district court for definitive resolution of that dispute.

Respectfully submitted,

  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UTILITY WORKERS UNION OF AMERICA, AFL-  
CIO,

*Plaintiff,*

v.

J. KEVIN BOOTH, DAVID ROWLAND,  
GREGORY LANHAM, DARLA OPEL, MAREI  
BURNFIELD, and UTILITY WORKERS UNION OF  
AMERICA LOCAL 537,

*Defendants.*

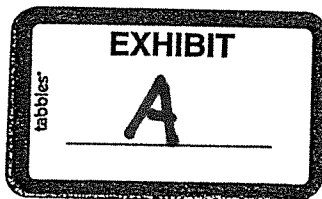
CASE NO. 2:18-CV-00398-DSC

PLAINTIFF'S BRIEF IN SUPPORT OF  
MOTION FOR A PRELIMINARY INJUNCTION

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### PRELIMINARY STATEMENT

Plaintiff Utility Workers Union of America, AFL-CIO (“UWUA” or “National Union”) submits this brief in support of its motion for a preliminary injunction enjoining the Defendants (the former officers of UWUA Local 537 and the Local itself) from unlawfully resisting a valid trusteeship imposed on the Local by the UWUA’s National President in accordance with the provisions of the UWUA Constitution.

This dispute arises from Local 537’s opposition to and interference with bargaining over employee benefits between American Water Works Company (“American Water”) and the Union National Benefits Committee, a multi-union consortium led by the UWUA. This mature bargaining relationship, which has been in place since at least 1980, has led to the negotiation of a series of national benefits agreement (“NBAs”) governing the provision of health, pension, disability and other benefits to all American Water employees represented by the participating unions. The current NBA is set to expire on July 31, 2018, and the UWUA is actively preparing for the commencement of negotiations with American Water in mid-April of 2018.

Local 537, which represents approximately 590 of the 3,100 employees who are covered by the NBA, has steadfastly resisted UWUA’s efforts to renegotiate the national agreement. In stark contrast to the conduct of its sister locals, Local 537’s officers have failed to attend bargaining meetings, have refused to distribute interest surveys to the Local’s members, have refused to communicate with UWUA leadership in any way concerning the negotiations, and have openly defied the UWUA’s attempts to secure employee benefits on a companywide basis.

Local 537’s intransigence and refusal to abide by long-established bargaining procedures severely threatened the integrity of the bargaining process for a new NBA for all UWUA members who would benefit from such negotiations. Accordingly, at a conference call of the

UWUA National Executive Committee on March 18, 2018, UWUA National President D. Michael Langford imposed a trusteeship on Local 537 effective March 19, 2018.

Despite receiving notice that National President Langford placed Local 537 under trusteeship, thereby removing all Local 537 System and District officers and suspending their authority in whole, Local 537's former officers have refused to recognize and fully cooperate with the trusteeship and to abide by Trustee Duffy's authority. Rather, relying on a purported vote of the Local's membership to "disaffiliate" from UWUA, the former officers have asserted, through their attorney, that the trusteeship is "ineffective" and that the Local's membership is now represented for all purposes by a new, independent organization known as the "Utility Workers United Association, Local 537."

The UWUA Constitution, which is a "contract[ ] between . . . labor organizations" enforceable in federal court under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, authorizes the UWUA National President to institute a trusteeship over a local union when he or she determines that doing so is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objectives of the National Union. As shown below, the UWUA has an overwhelming likelihood of success on the merits of its claim under LMRA § 301 that the Local is violating the UWUA Constitution by resisting a trusteeship imposed in full compliance with the provisions of that Constitution. Because the UWUA has acted in full compliance with the provisions of its Constitution in imposing the trusteeship, the trusteeship is entitled to a statutory presumption of validity under Section 304 of the Labor-Management

Reporting and Disclosure Act of 1959 (“LMRDA”), 29 U.S.C. § 464, and preliminary injunctive relief is justified as a matter of course to enforce the trusteeship.

### STATEMENT OF FACTS

#### I. Background: The Relevant Labor Organizations and Governing Documents

UWUA is a national union that represents approximately 55,000 utility workers. Local 537 is a local labor organization based in Washington, Pennsylvania that is affiliated with, and subordinate to, the UWUA. The Local represents approximately 640 employees in Pennsylvania, West Virginia, and Maryland.

The relationship between the UWUA and its local affiliates is governed by the UWUA Constitution. Declaration of David Radtke (“Radtke Decl”), Ex. 1. Like virtually every national union constitution, and as expressly permitted by Title III of the LMRDA, 29 U.S.C. §§ 461–64, the UWUA Constitution gives the National President the power to place a local union in trusteeship. Specifically, the UWUA Constitution states that “[w]henever the National President has reason to believe that trusteeship action is required and after consultation with the National Union’s Executive Committee,” he or she “may appoint a trustee to take charge and control of a local union or of an affiliated body in accordance with the provisions of the [LMRDA].” UWUA Const. Art. IV § 6-B(1). Consistent with federal law, the UWUA Constitution permits the appointment of a trustee “for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objectives of the National Union.” *Id.*

Upon the establishment of a trusteeship, the Trustee “shall be authorized to take full charge of the affairs of the local union.” *Id.* § 6-B(2). The Trustee may also “remove any or all officers and may appoint temporary officers and agents during his/her trusteeship,” and “take

such other action as is in his/her judgment necessary for the preservation of the local union . . . .”

Id. Upon imposition of a trusteeship, “all money, books, and property of the local union or affiliated body shall be turned over to the trustee.” Id. § 6-B(3).

The imposition of a trusteeship by the National President “must be previously authorized or subsequently ratified after a fair hearing before the National Executive Committee or a Subcommittee of the National Executive Board selected by the National Executive Committee.” If, as here, that hearing is not conducted before the trusteeship’s imposition, it must be conducted within 30 days thereafter (as it will be, see infra p. 7). Id. § 6-B(6).

## II. Local 537’s Resistance to the Renegotiation of the National Benefits Agreement

Since the 1980s, UWUA has led a consortium of labor unions engaged in companywide bargaining with American Water and its subsidiaries over a national benefits agreement (“NBA”) covering medical insurance, pension and retiree health benefits, and short-term disability benefits. Declaration of D. Michael Langford (“Langford Decl.”) ¶ 6. There currently are approximately 3,100 employees covered by the NBA. Declaration of Shawn Garvey (“Garvey Decl.”) ¶ 26. Coordinated, multi-union bargaining on these highly-important employee benefit issues maximizes the bargaining power of union-represented workers in securing such benefits, while also providing the workers and American Water with the mutual advantages attendant to nationwide benefit plans covering large employee groups.

The current NBA expires on July 31, 2018, and its renegotiation is an urgent priority for the UWUA.<sup>1</sup> Langford Decl. ¶ 7. American Water and the UWUA have calendared 12

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<sup>1</sup> After the 2005–2010 NBA expired, fractious negotiations resulted in the UWUA filing unfair labor practice charges against American Water before the National Labor Relations Board. In American Water Works, Inc., 361 NLRB 64 (2014), the Board found that American Water had violated the National Labor Relations Act by failing to bargain in good faith. While the case was on appeal, the UWUA and American Water settled the case for, *inter alia*, ten million dollars to

bargaining sessions to take place in 3-day blocks beginning on April 17, 2018. Garvey Decl.

¶ 21. Accordingly, the UWUA and other unions party to the NBA have engaged in active preparations for the renegotiation. Id. On November 7, 2017 and February 6, 2018, the UWUA scheduled meetings with representatives of all affected locals to plan and strategize for the bargaining. Id. And, on December 1, 2017, the UWUA sent out surveys to local officers to distribute to members working at American Water to learn what subjects are important to the members in the upcoming negotiations. Id. Local 537's officers refused to participate in either of these meetings, and also refused to distribute the surveys to its members. Id. ¶ 22.

Instead of cooperating with its parent union, Local 537 has engaged in a campaign of open defiance against the UWUA's legitimate interest in securing companywide benefits for the workers it represents in the NBA negotiations with American Water. For example, on February 15, 2018, Local 537 filed spurious unfair labor practice charges with four separate regions of the National Labor Relations Board, alleging that, contrary to forty years of practice, American Water had a duty to bargain separately and directly with the Local over NBA-covered benefits.<sup>2</sup> Langford Decl. ¶ 11; Garvey Decl. ¶ 19. And, in August 2017, Local 537 sent notices to American Water, the Federal Mediation and Conciliation Service, and various state agencies, informing them that Local 537 was withdrawing from bargaining for the NBA upon its

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be applied towards back benefits, and a new NBA effective October 31, 2014. Garvey Decl. ¶ 10.

<sup>2</sup> These charges are spurious because they are substantially similar to charges Local 537 previously filed in June 2016 with the Pittsburgh Region of the Board. Those charges were summarily dismissed on September 30, 2016, based on a finding that "Local 537 is bound by mutual decisions of [American Water] and UWUA to amend the provisions in the National Benefit Agreement." Radtke Decl., Ex. 2.



expiration on July 31, 2018. Garvey Decl. ¶ 16; Radtke Decl., Ex. 3.<sup>3</sup> Consistent with the UWUA's understanding and decades of past practice, American Water advised Local 537 that it was under no obligation to bargain separately and directly with the Local over employee benefits, because such benefits have always been bargained with the UWUA on a nationwide basis. Langford Decl. ¶ 10.

Given that Local 537 represents approximately one-sixth of union-represented employees subject to the NBA, its attempts to withdraw from the negotiations have been extraordinarily disruptive, have led to substantial uncertainty among Local 537's sister locals and other unions in the bargaining consortium, and have interfered with and threatened to undermine UWUA's ability to carry out its duties as a bargaining representative with respect to the negotiation of a successor NBA. Langford Decl. ¶ 16; Garvey Decl. ¶¶ 22–26.

### III. The Imposition of the Trusteeship

On Friday, March 16, 2018, UWUA learned that Local 537 had posted a notice stating that there was to be a March 19, 2018 meeting in Mechanicsburg, Pennsylvania—where a small number of Local 537 members are employed by American Water—at which one of the subjects would be “Disaffiliation Discussion and Vote.” Radtke Decl., Ex. 5; Langford Decl. ¶ 14. UWUA was not able to learn anything further about this Mechanicsburg meeting and purported “Disaffiliation Discussion and Vote,” including whether other meetings had been scheduled for a similar purpose in other locations within Local 537's broad geographic jurisdiction, or even

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<sup>3</sup> Local 537 took this position despite having recently executed a collective bargaining agreement in West Virginia—effective May 26, 2017 through April 15, 2022—which explicitly states that the parties would be bound by the results of any renegotiation of the NBA between the UWUA and American Water as to the group insurance welfare, pension, and 401(k) plans, and that issues involving those three plans “shall not be subject to local negotiations.” Radtke Decl., Ex. 4; Garvey Decl. ¶ 17.

whether the notice referred to some nature of disaffiliation from the NBA bargaining consortium, rather than disaffiliation from the UWUA itself. Id.

On Sunday, March 18, 2018, National President Langford convened a conference call meeting with the UWUA Executive Committee to consult them on placing Local 537 in trusteeship. Langford Decl. ¶ 15; Radtke Decl., Ex. 6. Present at this call were President Langford, Executive Vice President Steve Van Slooten, Vice President John Duffy, and Executive Board Member James Slevin. National Secretary-Treasurer Michael Coleman was excused from the call, and the UWUA's General Counsel David Radtke was also present. Id. At that March 18 meeting, President Langford recounted the history of Local 537's refusal to participate in, continued interference with, and attempts unilaterally to withdraw from the UWUA's efforts to negotiate a new NBA, which was particularly concerning in light of the negotiations set to commence in mid-April of 2018. Id. ¶ 16. He then recommended that Local 537 be placed in trusteeship in accordance with Article IV, Section 6-B(1)–(6) of the UWUA Constitution. Id. ¶ 17. The Executive Committee unanimously agreed with President Langford's recommendation, and President Langford appointed Vice President John Duffy as Local 537 Trustee, effective March 19, 2018. Id.

President Langford made this determination for two of the four reasons permissible under the UWUA Constitution and the LMRDA—assuring the performance of collective bargaining agreements or other duties of a bargaining representative, and otherwise carrying out the legitimate objectives of the National Union. Id. ¶ 19. In accordance with Article IV, Section 6-B(6) of the UWUA Constitution, a hearing is scheduled to take place in Pittsburgh, Pennsylvania on April 12, 2018, to consider whether to ratify and maintain the trusteeship. Id. ¶ 22.

#### IV. Resistance to the Trusteeship

The UWUA communicated the imposition of the trusteeship and the appointment of John Duffy as Trustee to all members and officers of Local 537 via letter on March 19, 2018, stating the basis of and purpose for the trusteeship, and confirming the removal of the officers from their position pursuant to the trusteeship. Langford Decl. ¶ 21; Radtke Decl., Ex. 7. A copy of this letter was delivered at 9:30 A.M. to Local 537 headquarters in Washington, Pennsylvania, and at 1:30 P.M. to the home residence of former Local 537 President J. Kevin Booth. Declaration of Lawrence Kelley (“Kelley Decl.”) ¶ 4. Representatives of the UWUA also appeared prior to the meeting previously scheduled in Mechanicsburg, Pennsylvania to distribute notice of the trusteeship and advise Local 537 members upon their arrival at the meeting that no such meeting could be conducted nor votes taken except under Trustee Duffy’s authority. Declaration of Richard Cossell (“Cossell Decl.”) ¶ 6.

After providing notice to the Local 537 officers of the trusteeship and their removal from office, UWUA representatives secured possession of Local 537’s office and personal property, as provided for by Article IV, Section 6-B(5) of the UWUA Constitution, as well as Local 537’s bank accounts. Kelley Decl. ¶ 6. However, the former officers have refused to acknowledge the validity and effectiveness of the trusteeship, and to comply fully with its terms. To the contrary, on March 19, 2018, former Local 537 President Booth emailed a letter to Jeff McIntyre, President of Pennsylvania American Water, asserting that Local 537’s membership had voted to disaffiliate from the UWUA and form an independent association known as the Utility Workers United Association, Local 537.” Radtke Decl., Ex. 8. That assertion was repeated in a March 21, 2018 letter from Samuel A. Pasquarelli (counsel for the individual defendants) to National

President Langford, which explicitly made the claim that the trusteeship was “ineffective” owing to the purported disaffiliation. Radtke Decl., Ex. 9; Langford Decl. ¶ 23.

The UWUA was not informed by the Local in advance about any scheduled disaffiliation vote. Langford Decl. ¶ 14. Nor was the UWUA given any opportunity to participate in or be heard at any such vote. Indeed, the UWUA has been provided no evidence that such a disaffiliation vote ever was conducted; or, if conducted, whether it was conducted in accordance with all applicable legal requirements, including but not limited to the due process requirements of Local 537’s own Constitution and Bylaws.

In the meantime, there is every indication that the former officers of Local 537 continue to hold themselves out as the officers of a new, independent labor organization known as the “Utility Workers United Association, Local 537,” and do not intend to abide by the lawful trusteeship imposed on the Local by National President Langford.

## ARGUMENT

### I. The Statutory Framework for the Enforcement of Trusteeships

“A union constitution is a contract between labor organizations[;] . . . [as] such, in an action brought under 29 U.S.C. § 185 [LMRA § 301], it may be enforced like any other contract.” Local 1052, United Bhd. of Carpenters & Joiners v. Los Angeles Cnty. Council of Carpenters, 944 F.2d 610, 613 (9th Cir. 1991); see also Woodell v. Int’l Bhd. of Electrical Workers, 502 U.S. 95, 99–100 (1991) (a union constitution is a “contract” between the parent union and its affiliated locals and is enforceable under LMRA § 301).

The leading case concerning the enforcement of a trusteeship under LMRA § 301 is Nat’l Ass’n of Letter Carriers v. Sombrotto, 449 F.2d 915 (2d Cir. 1971). See Transp. Workers Union Local 234 v. Transp. Workers Union of Am., 131 F. Supp. 2d 659, 663 (E.D. Pa. 2001)

(discussing and following Sombrotto); United Union of Roofers, Waterproofers & Allied Workers v. Composition Roofers Union, Local 30, No. 03-CV-1699, 2003 WL 21250627, at \*4 (E.D. Pa. Mar. 28, 2003) (same). As Sombrotto holds, in trusteeship cases, LMRA § 301 is to be read in conjunction with Title III of the LMRDA, 29 U.S.C. §§ 461–66, which specifically regulates trusteeships. 449 F.2d at 921.

Title III of the LMRDA allows a local union and its members to challenge the validity of a trusteeship imposed on the local by its parent union, see 29 U.S.C. § 464(a), but provides that in any such challenge, “a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing . . . *shall be presumed valid* for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title,” 29 U.S.C. § 464(c) (emphasis added). Among the “purpose[s] allowable under section 462” for establishing a trusteeship are “assuring the performance of collective bargaining agreements or other duties of a bargaining representative” and “otherwise carrying out the legitimate objects” of the parent union—purposes that also are allowable grounds for trusteeship under the UWUA Constitution, which, in relevant part, tracks the language of 29 U.S.C. § 462.

Against this statutory background, Sombrotto concluded that, given the “rather stiff presumption of validity” that attaches to a trusteeship established by a parent union in conformity with the procedural requirements of its constitution, “Congress can hardly have wanted to leave to the local” the self-help remedy of “simply ignoring its parent’s mandate.” 449 F.2d at 921. Rather, the statutory scheme adopted by the LMRDA Congress “clearly evidences an

expectation that disputes over trusteeships would be litigated *with the trusteeship in effect*.” Id. (emphasis added). In cases where a local union defies that expectation and forces the parent union to bring suit for immediate injunctive relief while the trusteeship is being resisted, “the parent [that can show it has complied with its constitution] is entitled to a preliminary injunction imposing a trusteeship on application unless the local comes forward with adequate proof that the trusteeship is not being sought in good faith” for a permissible purpose. Id.

Thus, although a plaintiff seeking a preliminary injunction normally bears the burden of showing “(1) that they are reasonably likely to prevail eventually in the litigation and (2) that they are likely to suffer irreparable injury without relief,” Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly, 309 F.3d 144, 157 (3d Cir. 2002), that standard is relaxed in proceedings to enforce a trusteeship. Indeed, “rigidly impos[ing]” such a burden on a parent union seeking to enforce a trusteeship against one of its resisting locals would permit the local to “turn the statutory scheme for handling the trusteeship problem on its head.” Sombrotto, 449 F.2d at 920.

Instead, under Sombrotto and its progeny, a parent union is presumptively entitled to a preliminary injunction enforcing a trusteeship imposed on a subordinate body if the parent union demonstrates that: (1) it imposed the trusteeship pursuant to its Constitution; (2) for a purpose permissible under the LMRDA; and (3) the trusteeship was authorized or will be ratified after a fair hearing. And, that presumptive entitlement to a preliminary injunction can be defeated only by “clear and convincing proof” that the trusteeship was not established in good faith for a permissible purpose. Sombrotto, 449 F.2d at 921; see also e.g. Int’l Bhd. of Boilermakers v. Local Lodge D31, 694 F. Supp. 1203, 1207–08 (D. Md. 1988) (“The circuit courts that have addressed the propriety of preliminary injunctions to enforce a trusteeship have generally not applied the traditional criteria for preliminary injunctions because of 29 U.S.C. § 464(c) . . . .

These cases hold that in seeking an injunction the international need not show a likelihood of success on the merits . . . .”); Int’l Bhd. of Boilermakers v. Local Lodge D238, 678 F. Supp. 1575, 1583 (M.D. Ga. 1988) (“In a trusteeship situation . . . courts relax somewhat the stringent standard ordinarily applied to requests for preliminary injunctive relief.”).

The statutory presumption of validity arises even where, as here, a trusteeship is imposed prior to a hearing, so long as the parent union’s constitution provides for such pre-hearing trusteeships. Int’l Bhd. of Teamsters v. Local Union No. 810, 19 F.3d 786, 791 (2d Cir. 1994) (emphasis added). Indeed, as the Third Circuit squarely held in Morris v. Hoffa, 361 F.3d 177, 196 (3d Cir. 2004), § 464(c)’s plain language validates the pre-hearing trusteeship “absent sufficient evidence to overcome the presumption of validity,” because “the eighteen month period of validity of the trusteeship cannot be construed to begin at the conclusion of the ratification hearing or at any time other than ‘the date of its establishment.’”

**II. The UWUA’s Likelihood of Success on the Merits is Overwhelming Because, in Line With the LMRDA’s “Presumption of Validity,” It Need Show Only That the Trusteeship Was Imposed in Conformity with the UWUA Constitution and for a Proper Purpose**

UWUA’s claim in this lawsuit is that Local 537 and its former officers, through their refusal to recognize the validity and effectiveness of the trusteeship and to comply fully with its terms, have violated the UWUA Constitution and hence are subject to suit for injunctive relief under § 301(a) of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185(a). As we now show, UWUA’s likelihood of success on the merits of this claim is overwhelming.

**A. The Trusteeship Was Procedurally Proper Under the UWUA Constitution**

As set out above, the UWUA Constitution expressly authorizes the National President, after consultation with the National Executive Committee, to institute an immediate trusteeship, prior to a union hearing, so long as it is “subsequently ratified after a fair hearing before the

National Executive Committee or a Subcommittee of the National Executive Board selected by the National Executive Committee.” Radtke Decl., Ex. 1, UWUA Const. Art. IV § 6-B(6). Such a hearing must be held in the geographic jurisdiction of the local union, and must occur no later than 30 days after the imposition of the trusteeship. Id.

It cannot be disputed that the UWUA has properly followed its Constitution in imposing the trusteeship. On March 18, 2018, National President Langford convened a meeting of the National Executive Committee, at which he explained the nature of Local 537’s conduct in undermining the performance and renegotiation of the NBA, the deleterious effect this has had on the National Union’s ability to represent its members in advance of highly important multi-union negotiations with American Water over employee benefits, and his opinion that a trusteeship was warranted. Supra p. 7. The National Executive Committee unanimously endorsed his recommendation, and a trusteeship was imposed effective March 19, 2018. Id. Subsequent to the imposition of the trusteeship, the UWUA scheduled a hearing to occur less than 30 days later (April 12, 2018) within the geographic jurisdiction of the local union (Pittsburgh, Pennsylvania). All of the procedural requirements of the UWUA Constitution have thus been met.

**B. The Trusteeship Was Imposed for a Proper Purpose Under the UWUA Constitution and the LMRDA**

President Langford imposed the trusteeship on Local 537 “to assure the performance of collective bargaining agreements or other duties of a bargaining representative, and otherwise carry out the legitimate objectives of the National Union.” These purposes are permissible under the UWUA Constitution, Article IV § 6-B(1) and under the LMRDA, 29 U.S.C. § 462.

Local 537’s actions—including its repeated baseless requests to withdraw from national bargaining over employee benefit issues and to bargain separately and directly with American



Water over those issues; its repeated filing of spurious charges with the National Labor Relations Board to vindicate its asserted right to do so; and its refusal to engage with the UWUA and other UWUA locals in developing and implementing a bargaining plan and strategy for the upcoming renegotiation of the NBA—caused UWUA grave concern on two fronts. First, these actions interfered with and threatened to undermine UWUA’s performance of its duties under the NBA, a collectively-bargained agreement with American Water, and its responsibility to negotiate a successor agreement on behalf of all UWUA members across the country who are employed by American Water. Second, these actions had the effect of impairing Local 537’s performance of its own duty as a bargaining representative with respect to its own collective bargaining agreements with American Water, all of which incorporate the benefits terms from the NBA negotiated by the UWUA through the multi-union consortium. See, e.g. Radtke Decl., Ex. 4 (2017–2022 agreement with West Virginia subsidiary of American Water).

Although the case law concededly is sparse, the courts that have addressed the issue presented here have upheld the imposition of trusteeships on uncooperative local unions who have attempted to resist a parent union’s decision to vest bargaining authority with higher-level bodies. In Local 1302 v. United Bhd. of Carpenters & Joiners, 477 F.2d 612 (2d Cir. 1973), a local union representing 400 members sought to disaffiliate from a Metal Trades Council, which had for 25 years negotiated collective bargaining agreements representing 8000 employees across 11 unions. Id. at 613. As the local union acted in direct defiance of an order from its parent union, the parent placed the local under trusteeship. Id. Evidence presented to the trusteeship committee demonstrated that the coordinated bargaining “had resulted over many years in stable bargaining relationships under which the members of the affiliated locals had received substantial benefits,” and that the local union’s actions would “delay[ ] the then current

collective negotiations [and] have a detrimental effect on the process of collective bargaining.”

Id. at 614. The Second Circuit enforced the trusteeship, finding that these conclusions were “clearly justified,” given that the Local’s attempted disaffiliation “might well lead to attempts at disaffiliation by other locals . . . and the undermining of the Council’s position as bargaining representative.” Id. at 614.<sup>4</sup>

Similarly, in Gordon v. Laborers’ Int’l Union, 490 F.2d 133 (10th Cir. 1973), a local union resisted a parent union’s attempt to force it to affiliate with a district council composed of eight locals, and instead negotiated its own collective bargaining agreements. Id. at 135. Like in this case, the parent union’s Executive Board had ordered that a uniform health, welfare, and pension plan be negotiated for all members, and the district council had negotiated a collective bargaining agreement that bound all employers to a common health and welfare benefit plan and pension fund. Id. at 136. The parent union placed the local under trusteeship for its disobedience. Id. at 135. In response to a challenge brought by the local’s members, the Tenth Circuit affirmed the imposition of the trusteeship. The court found that “[t]he International had established legitimate objectives concerning health, welfare, and pension programs. Through its constitution the International required that bargaining negotiations be conducted by the district council. Local 612 flaunted its disregard of these objectives and rules of the International.” Id.

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<sup>4</sup> Benda v. Int’l Ass’n of Machinists, 584 F.2d 308 (9th Cir. 1978) is not to the contrary. There, after a district lodge (an intermediate body composed of several local unions) disobeyed its parent union’s order to engage in coordinated bargaining, instead taking an employer’s contract proposal to its membership for a vote, the parent union imposed a trusteeship on that body. Id. at 311–12. The Ninth Circuit refused to enforce the trusteeship, finding that for twenty years, the parent and its district lodges had followed a practice of separate voting by the employees at each corporate subsidiary, and that it was the parent union, not the district lodge, that had sought to deviate from this established norm. Id. at 317. Benda explicitly distinguished the Second Circuit’s decision in Local 1302 on the ground that there, “the impact of the local’s action on well-defined collective bargaining responsibilities . . . made the trusteeship legitimate.” Id.

at 137. See also Cascade Local Lodge No. 297 v. Int'l Ass'n of Machinists, 684 F.2d 609, 610 (9th Cir. 1982) (per curiam) (where district organization had conducted bargaining for almost a decade, trusteeship enforced because its disregard by local officers would disrupt collective bargaining obligations).

Here, the UWUA's role in negotiating employee benefits on a companywide basis (through the Union National Benefit Committee) has been clear and well-established for nearly four decades. This role is acknowledged in the collective bargaining agreements executed by Local 537 itself, which either explicitly reference the NBA and state that benefits shall not be the subject of local bargaining, or expressly incorporate the NBA's benefits provisions, or both. See, e.g., Radtke Decl., Ex. 4 (2017–2022 agreement with West Virginia subsidiary of American Water). Local 537's actions have caused damage both to its own ability to perform its duties under collective bargaining agreements that incorporate the NBA, and to the UWUA's ability to fulfill its duty to bargain a successor NBA to replace the NBA that expires on July 31, 2018.

In short, the UWUA undeniably imposed the trusteeship for at least one proper purpose under the LMRDA and the UWUA Constitution, and it is axiomatic “that a single proper purpose is sufficient to justify a trusteeship . . . .” Morris, 361 F.3d at 188; accord e.g. Mason Tenders Dist. Council v. Laborers' Int'l Union, 884 F. Supp. 823, 836 (S.D.N.Y. 1995) (“One legally permissible purpose is all that is required for a valid trusteeship.”).

**C. Local 537's Purported Attempt to Disaffiliate From the UWUA Does Not Affect the Validity or Effectiveness of the Trusteeship**

In an effort to justify their refusal to comply in full with the trusteeship, Local 537's former officers, through their attorney, have asserted that the trusteeship is “ineffective” on the ground that Local 537's membership purportedly has voted to disaffiliate from the UWUA and

form a new, independent union known as “Utility Workers United Association, Local 537.” This asserted basis for non-compliance with the trusteeship fails from beginning to end.

To begin with, the trusteeship was imposed by UWUA President Langford through official action taken by him on Sunday, March 18. Supra, p.7. Although in accordance with that official action the trusteeship was made effective the next day (Monday, March 19), by force of logic it became effective *immediately* (*i.e.*, at 12:01 A.M.) on Monday, March 19, *before* a disaffiliation vote is alleged to have occurred later that day.<sup>5</sup> It is settled law that “[a] trustee’s powers vest immediately on appointment; judicial approbation is unnecessary.” Cty.. Mun. Employees’ Supervisors’ & Foremen’s Union Local 1001 v. Laborers’ Int’l Union, 365 F.3d 576, 578 (7th Cir. 2004); see also C.A.P.E. Local Union 1983 v. Int’l Bhd. of Painters & Allied Trades (“Painters”), 598 F. Supp. 1056, 1069 n.13 (D.N.J. 1984) (“[T]he disaffiliation election, occurring after a ‘facially’ valid trusteeship was imposed, is void and has no effect.”). Therefore, at 12:01 A.M. on Monday, March 19, Local 537’s then-officers were divested of all authority otherwise granted them by the UWUA Constitution and the Local 537 Constitution and By-Laws to preside over meetings or oversee any purported disaffiliation vote.

The mere fact that Local 537’s former officers were without authority to hold any purported disaffiliation vote is sufficient to defeat their effort to resist the trusteeship on the basis of that purported disaffiliation vote. However, an independent (and equally fatal) legal flaw in that effort is the former officers’ inability to show that any such disaffiliation vote was conducted in accordance with all applicable legal requirements.

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<sup>5</sup> Moreover, the UWUA made extensive efforts to notify the Local, its former officers, and the membership of the trusteeship’s imposition *before* such a disaffiliation vote is alleged to have occurred. See Kelley Decl. ¶¶ 4–7; Cossell Decl. ¶¶ 4–6.

In this regard, there are well-reasoned district court decisions imposing basic due process requirements on local unions seeking to disaffiliate from their parent union, including, most notably, the above-cited decision in Painters, 598 F. Supp. 1056. There, after holding two meetings—one for the local’s Executive Board, and the other for officers, shop stewards, and committee representatives—the local union decided to hold a disaffiliation vote among the membership at large. Id. at 1061. After receiving news of the upcoming disaffiliation vote through an anonymous telephone call, the national union placed the local in trusteeship. Id. at 1062–63. The trusteeship was imposed two days before the scheduled disaffiliation vote. Id. at 1063. The local union nevertheless went ahead with the vote, and the membership voted 297 to 75 in favor of disaffiliation. Id. at 1064.

In Painters, as here, “officials of the Local never intimated to representatives of the [parent union] that unless certain complaints were remedied, there would be a disaffiliation vote. Nor did Local officials ever inform [the parent union] that an actual disaffiliation vote had been scheduled.” Id. at 1061. And, notably, “[n]either before nor after the vote was scheduled was [the national union] given an opportunity to convey to the Local members its opinions or perceptions regarding disaffiliation . . . .” Id.

On these facts, the court enforced the trusteeship and invalidated the purported disaffiliation vote. It noted that 29 U.S.C. § 462 confers upon national unions “an obligation to protect the membership of subordinate organizations from certain types of abuses,” and that “this obligation can hardly be met if the [parent] organization must stand by, because of insufficient time to conduct an exhaustive and meticulous investigation, and watch the subordinate organization drift out of its sphere of influence.” Id. at 1069. It found that “the trusteeship was

legitimately imposed, not to *prevent* a disaffiliation, but to assure that any disaffiliation decision be made with sufficient democratic safeguards.” Id. at 1074 (emphasis in original).

The court found that, at a minimum, a disaffiliation vote “must provide members with an adequate opportunity for reflection and for the presentation of opposing viewpoints,” and that these requirements were not met where “no effort was made to notify [the parent union],” and therefore “the members were not fully informed of all the consequences of an independent status.” Id. In sum, the Court concluded that “[d]isaffiliation is a rather extraordinary step for a union to take. It is not a step a [national union] has a right to prevent, but it is a step that a [national union] has an obligation to see is not lightly taken, or taken based on insufficient information.” Id. at 1074.<sup>6</sup>

The facts in Painters are on all fours with this case. Local 537’s former officers failed to advise UWUA of any disaffiliation vote, or provide the UWUA with any opportunity to address the membership regarding the advantages of remaining an affiliate and the potential adverse consequences of disaffiliation—including, specifically, the advantages of multi-union nationwide bargaining over employee benefits and the potential adverse consequences of “going it alone” on that front. Under Painters, Local 537’s former officers were not at liberty to conceal their plans for disaffiliation from the UWUA and then seek to present the UWUA with a *fait accompli* strategically timed to disrupt the impending negotiations for a new NBA.

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<sup>6</sup> While there is not an abundance of case law about this precise question—likely because courts recognize that disaffiliation votes taken after trusteeships have been imposed are *per se* null and void—Painters is not the only court to have reached this conclusion. See Int’l Bhd. of Boilermakers v. Local Lodge D474, 673 F. Supp. 199, 203 (W.D. Tex. 1987) (“An affiliation process to be adequate must provide members with an adequate opportunity for reflection and for the presentation of opposing viewpoints.”).

Moreover, there is reason for suspicion that the Local's purported disaffiliation vote may also have been procedurally infirm on other grounds, including the Local's failure to adhere to the requirements of its own Constitution and By-Laws.<sup>7</sup> To this point in time, however, the Local's former officers have failed to respond to the UWUA's request for information relating to these other procedural issues. Further briefing on these points may be appropriate upon the UWUA's receipt of this requested information, or upon the conduct of discovery if that further information is not forthcoming.

### III. The Remaining Three Preliminary Injunction Factors Weigh Decisively in Favor of Granting Injunctive Relief

We now turn to the other factors a court may consider in determining whether to grant a preliminary injunction—although in considering these factors, it bears emphasis that given the above showing regarding the UWUA's likelihood of success on the merits, the UWUA is presumptively entitled to a preliminary injunction enforcing the trusteeship without regard to these other factors. Sombrotto, 449 F.2d at 921; Transp. Workers Union, 131 F. Supp. 2d at 663.

#### A. The UWUA Will Suffer Irreparable Harm in the Absence of Injunctive Relief

The UWUA will be irreparably harmed if Defendants are permitted to maintain their defiance of the trusteeship, for two primary reasons. First, as described supra pp. 8–9, the former officers of Local 537 are holding themselves out as the representatives of an independent organization, the “Utility Workers United Association, Local 537,” thereby seeking to usurp

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<sup>7</sup> By way of example only, Local 537's Constitution and By-Laws require that “all resolutions or [by-laws] amendments must first be read and discussed at a regular or special meeting of each District to be held at least thirty (30) but no more than sixty (60) days after being approved for a referendum vote,” before they are in fact put to a vote. Radtke Decl., Ex. 10, Article 17 § 5. This procedure also requires that “all voting on resolutions or [by-laws] amendments must be by secret ballot.” Id. § 3.

Local 537 as the certified bargaining representative with the employers with whom collective bargaining agreements are in place. Unabated continuation of such actions will substantially undermine the reputation of both the Local Union and the UWUA and lead to confusion among employers dealing with Local 537, as well as among the members of Local 537. Courts within the Third Circuit have recognized that harm to a union's reputation constitutes irreparable injury warranting a preliminary injunction. Roofers, Waterproofers & Allied Workers, 2003 WL 21250627, at \*6; Transport Workers, 131 F. Supp. 2d at 667.

Second, Local 537's improper resistance and attempts to withdraw from the NBA negotiations have already interfered substantially with the UWUA's efforts to prepare for negotiations over a successor NBA beginning in mid-April of 2018. And, the continuation of that resistance could mean a fragmenting of the multi-union consortium that has bargained with American Water over companywide benefits for decades, or the substantial weakening of the consortium's bargaining power, either of which would adversely impact more than 3,000 American Water employees across the country, whose health, pension, disability, and other benefits are at stake in the NBA negotiations. Because the current NBA expires on July 31, 2018, and needs to be renegotiated in the coming months, the UWUA would be irreparably harmed by any further resistance by Local 537 and its former officers.

#### B. The Balance of Hardships Weighs Decisively in Favor of Injunctive Relief

The harm to the defendant officers should a preliminary injunction be granted is simply that, for the period between that injunction and a disposition on the merits, they will temporarily be out of office—a harm that pales in comparison to the harm to the UWUA and its American Water employee members stemming from Local 537's threatened undermining of the NBA negotiations. Moreover, while under trusteeship, Local 537 is protected against any significant irreparable harm by the fact that “the trustee is legally obligated to hold the property and assets



of the local affiliate[] in trust.” Local Lodge D238, 678 F. Supp. at 1583; 29 U.S.C. § 463(a)(2).

In short, the balance of hardships tilts decisively in the UWUA’s favor.

### C. The Public Interest Weighs Decisively in Favor of Injunctive Relief

The public interest is expressed through the provisions of the LMRDA which provide for trusteeships by parent unions over subordinate bodies. The LMRDA has deemed it to be within the public interest to empower parent unions to use trusteeships to enforce proper standards of conduct on their subordinate bodies. Morris, 361 F.3d at 186–87 (Congress was aware that “trusteeships are effective devices for maintaining order within labor organizations” and imposed the presumption of validity because “second guessing the judgments culminating in trusteeships could be both difficult and impractical”); see also Local Lodge D238, 865 F.2d at 1236–37 (11th Cir. 1989) (“Enforcing the trusteeships also increases the stability of labor organizations . . . . An increase in labor organizations’ stability furthers the public interest.”).

### CONCLUSION

For the foregoing reasons, the Court should grant the UWUA’s motion for a preliminary injunction, and enter an injunction in the form requested in the UWUA’s motion and accompanying proposed order.

Dated: March 29, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of March 2018, a true and accurate copy of the foregoing was filed via Court's CM/ECF system and served via e-mail and overnight mail upon the following counsel for the Defendants in this case:

Samuel J. Pasquarelli  
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/s/ Michael J. Healey

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UTILITY WORKERS UNION OF AMERICA, )  
AFL-CIO, )  
 )  
Plaintiff )

v. )

J. KEVIN BOOTH, DAVID ROWLAND, )  
GREGORY LANHAM, DARLA OPEL, MAREI )  
BURNFIELD and UTILITY WORKERS UNION )  
OF AMERICA, LOCAL 537, )  
 )  
Defendants )

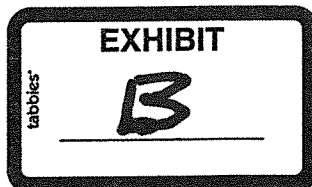
2:18-cv-00398-DSC

Hon. David S. Cercone,  
District Judge

**ANSWER AND DEFENSES OF DEFENDANTS J. KEVIN BOOTH,  
DAVID ROWLAND, GREGORY LANHAM, DARLA OPEL, MAREI  
BURNFIELD and UTILITY WORKERS UNION OF AMERICA, LOCAL 537**

AND NOW, come the Defendants, J. Kevin Booth, David Rowland, Gregory Lanham, Darla Opel, Marei Burnfield and Utility Workers Union of America, Local 537 and file the within Answer and Defenses to Plaintiff's Complaint, averring in response thereto the following:

1. Paragraph 1 of the Complaint is admitted in part and denied in part. It is admitted that this action seeks a preliminary and permanent injunction and the other relief asserted in the Complaint. For the reasons hereinafter set forth, which are incorporated herein by reference, it is denied that the trusteeship referred to in the Complaint was lawfully imposed or effective, it is denied that the terms of the UWUA Constitution or applicable law were followed in attempting to impose the trusteeship, and it is denied that there was any need to assure the performance of any collective bargaining agreements or other duties of a collective bargaining representative or to carry out any legitimate objectives of the National Union.



2. Paragraph 2 of the Complaint is admitted in part and denied in part. It is admitted that this action has been brought under Section 301 of the Labor Management Relations Act (“LMRA”), 29 U. S. C. A., §185 and under the Labor Management Reporting and Disclosure Act (“LMRDA”), 29 U. S. C. A., §461, et seq. By way of further answer, the Defendants incorporate by reference all the averments of this pleading. By way of additional further answer, the Defendants allege that while the trusteeship that is the subject of this Complaint is unlawful and thus a nullity, none of the Defendants have refused to abide by its terms during the pendency of this litigation. The Defendants did not seek to undermine or interfere with negotiations with American Water Works Company (hereinafter “AWW”) in any way. Rather, the individual Defendants, as officers of the Defendant, Utility Workers Union of America, Local 537, sought only to obtain a determination from the National Labor Relations Board regarding the ability of the Defendant, Utility Workers Union of America, Local 537 to negotiate the benefits referred to in Plaintiff’s complaint in their own right rather than as dictated by the Plaintiff. While the aforesaid negotiations have been conducted on a national basis since at least 1980, in every case, the negotiations were conducted as part of a multi-employer bargaining unit basis under federal labor law and every covered participant, including the Defendant, Utility Workers Union of America, Local 537, has been free to withdraw from those negotiations at any time.

3. Paragraph 3 of the Complaint is admitted.

4. Paragraph 4 of the Complaint is admitted in part and denied in part. It is admitted that venue lies in this District. It is denied that the trusteeship that is the subject of the Complaint was lawfully imposed.

5. Paragraph 5 of the Complaint is admitted.

6. [omitted in error by the Plaintiff in the preparation of the Complaint].

7. Paragraph 7 of the Complaint is admitted in part and denied in part. The averments concerning the identity of the individual Defendants and their addresses are admitted. The averments as to the officer positions of the individual Defendants are admitted. To the extent that it is relevant to the answer to the averments of this paragraph, it is denied that the trusteeship was lawfully imposed or that it is of any force and effect.

8. Paragraph 8 of the Complaint is admitted.

9. Paragraph 9 of the Complaint is a legal conclusion requiring no answer.

10. Paragraph 10 of the Complaint is admitted in part and denied in part. It is admitted that the bylaws adopted by local unions of the UWUA cannot conflict with the UWUA Constitution. It is denied that, in the instant case, there are any “policies of the National Union” that have been violated or that any of the Defendants have done anything that conflicts with any “policies of the National Union”.

11. Paragraph 11 of the Complaint is admitted.

12. Paragraph 12 of the Complaint is admitted.

13. Paragraph 13 of the Complaint is admitted.

14. Paragraph 14 of the Complaint is admitted.

15. Paragraph 15 of the Complaint is admitted.

16. Paragraph 16 of the Complaint is admitted in part and denied in part. It is admitted that since at least 1980, a consortium of labor unions has engaged in bargaining relative to certain employee benefits, including group medical benefits, applicable to certain employees of subsidiaries of the American Water Works Company. It is denied that the UWUA has led this consortium. Rather, the UWUA and other national unions, including but not limited to the United Steelworkers of America, the Service Employees International Union, the Laborers’

International Union of North America, and others have jointly led the bargaining for the employees involved. The local unions of each national union, including the local unions of the UWUA and specifically Local 537, have participated in every bargaining session since at least 1980 and said local unions have in fact provided the bulk of the information, facts, and strategy necessary for the successful conduct of the negotiations. In the case of Local 537, the UWUA only acts as its representative in said negotiations because in various of its labor agreements with subsidiaries of American Water, Local 537 has voluntarily agreed to allow the UWUA to act as its representative from negotiation to negotiation relative to the employee benefits involved. It is denied that this consortium engages in these negotiations with American Water and its subsidiaries. Rather, the negotiations are engaged in with the subsidiaries of American Water and those subsidiaries have appointed American Water as their representative for said negotiations.

17. Paragraph 17 of the Complaint is admitted.

18. Paragraph 18 of the Complaint is denied because the Defendants lack the information and knowledge sufficient to enable them to respond to the averments thereof.

19. Paragraph 19 of the Complaint is admitted.

20. Paragraph 20 of the Complaint is admitted in part and denied in part. It is admitted that the current NBA expires on July 31, 2018. It is admitted that surveys were sent to various members in December of 2017. The balance of the averments of Paragraph 20 are denied because the Defendants lack the information and knowledge sufficient to enable them to respond to said averments.

21. Paragraph 21 of the Complaint is denied. It is denied because it is a general averment with no facts that the Defendants can deny. By way of further answer, these

Defendants aver and state that while they and Local 537 have had past disagreements with the UWUA regarding its past conduct in “National Benefits Bargaining”, it has never “. . . engaged in a campaign of open defiance against the UWUA’s legitimate interest in securing companywide benefits. . . .”

22. Paragraph 22 of the Complaint is denied. It is denied because it is a general averment with no facts that the Defendants can deny. By way of further answer, these Defendants aver and state that during prior National Benefits Agreement bargaining, Local 537 and its officers not only assisted the UWUA in arriving at agreements, in some cases, Local 537’s officers were appointed by the UWUA to its National Benefits Agreement bargaining committee.

23. Paragraph 23 of the Complaint is denied. On October 31, 2014, Local 537 informed the Plaintiff that Local 537 would act as its own representative regarding bargaining for the insurance and retirement benefits for those employees of the subsidiaries of American Water where Local 537 was the certified collective bargaining representative. Local 537 notified American Water as the representative of its subsidiaries, Local 537 would be willing to either negotiate separately with American Water over those benefits relative to the American Water subsidiaries that it represented, or that it would do so on a joint basis. Local 537 never took the position that it was not bound by the National Benefits agreement through its July 31, 2018 expiration date-conversely, it acknowledged that it was bound to that agreement through that date.

24. Paragraph 24 of the Complaint is admitted, except that the effective date sought for successor benefits was August 1, 2018.



25. Paragraph 25 of the Complaint is denied. While the language quoted by the Plaintiff in Paragraph 25 of the Complaint is correct as to the one labor contract referred to therein, Local 537 has seven other labor contracts with subsidiaries of American Water that contain language which does not forbid Local 537 from acting as its own negotiator for insurance and retirement benefits.

26. Regarding Paragraph 26 of the Complaint, it is admitted that the UWUA so informed Local 537. It is denied that the UWUA had to power, right or authority to prevent Local 537 from such a withdrawal. By way of further answer, the averments of this pleading are incorporated herein by reference.

27. Paragraph 27 of the Complaint is denied. Local 537 filed separate unfair labor practice charges against the four subsidiaries of American Water with which it has collective bargaining agreements, namely Pennsylvania American Water Company ("PAWC"), West Virginia American Water Company ("WVAWC"), and Maryland American Water Company ("MDAWC"), alleging in each case that the subsidiaries against which the charges were filed refused to acknowledge their obligation to negotiate with Local 537 relative to insurance and retirement benefits, irrespective of the requirements of various contracts and the law applicable thereto. Local 537 did not allege that American Water had any duty to bargain with Local 537 over these benefits. While it is admitted that there had been a practice of negotiating such benefits on a nationwide basis, it is denied that this practice had any force of law or contractual agreement. Rather, the practice was a voluntary engagement that any local union and/or any subsidiary of American Water could terminate at will and in the past, such terminations have occurred.

28. Paragraph 28 of the Complaint is denied. The unfair labor practice charges referred to in Paragraph 28 of the Complaint dealt with the manner in which the National Benefits Agreement that was in effect on January 1, 2016, which was the period which the unfair labor practice charges referred to in Paragraph of the Complaint complained about was being administered. The National Labor Relations Board dismissed those unfair labor practice charges by holding that the Plaintiff was the authorized representative of Local 537 at that time. The National Labor Relations Board expressly held that “[Local 537’s efforts] to be excluded from being bound to the terms of any future national benefits agreement . . . does not affect the determination on the merits of the allegations in the instant charges.”.

29. While the Defendants do not recall any communication of March 8, 2018, it is not denied that the Plaintiff has taken the position set forth in Paragraph 29 of the Complaint.

30. Paragraph 30 of the Complaint is admitted in part and denied in part. It is admitted that Local 537’s representatives have been invited to at least one preparation meeting for National Benefits bargaining. It is denied that said representatives have refused to attend. Attendance at said meetings is and always has been voluntary. There is no requirement that Local 537 officials must communicate with the UWUA regarding National Benefits bargaining and the Defendants are unaware of any communication sent to Local 537 by the UWUA to which a response was mandated.

31. Paragraph 31 of the Complaint is denied. To the knowledge of the Defendant, J. Kevin Booth, D. Michael Langford called him by telephone on one occasion only, and did not indicate the subject of his call. Defendant Booth returned the call, which was routed to Mr. Langford’s voice mail, where Mr. Booth indicated that he was returning Mr. Langford’s call. Mr. Langford never called Mr. Booth again.

32. Paragraph 32 of the Plaintiff's complaint is denied. These Defendants lack the information and knowledge sufficient to enable them to respond to the averments thereof

33. Paragraph 33 of the Plaintiff's complaint is denied. Local 537 has not attempted to withdraw from NBA coverage, rather, it has advised the American Water subsidiaries and the UWUA that the bargaining units that it represents are bound to the NBA through July 31, 2018 and all that it sought thereafter was a determination from the National Labor Relations Board to the effect that Local 537 had the right to bargain for insurance and retirement benefits after July 31, 2018 acting on its own behalf and not with the UWUA acting as its representative. The Defendants are unable to respond to any averments that the position of Local 537 "... has been very disruptive to the negotiation process. . ." or that it "... is undermining the UWUA in its efforts to bargain a new NBA. . ." or that its withdrawal from NBA bargaining "... is leading to uncertainty and the potential for confusion and unrest, fragments the united front of labor solidarity . . . and is detrimental to the UWUA's efforts to reach agreement on a new NBA. . ." The aforementioned averments are also denied because the Defendants lack the information and knowledge sufficient to enable them to respond to the averments thereof because these Defendants have no information as to the veracity of any of said averments. By way of further answer, Local 537 does not seek to "withdraw from coverage" of the NBA, and the Defendants have notified the Plaintiff and American Water that they and the Association are willing to be bound by the current National Benefits agreement and the successor agreement that the Plaintiff and the other parties who participate in the National Benefits negotiations might arrive at.

34. Paragraph 34 of the Complaint is denied. It is denied that any harm has already been done to NBA bargaining preparation not only because these Defendants have no knowledge or information sufficient to enable them to respond to said averments but also because Local

537's conduct would in no way impede preparation for such negotiations. It is denied that Local 537's "engagement" is necessary or required to ensure the success of any such negotiations. The Defendants have notified the Plaintiff and American Water that they and the Association are willing to be bound by the current National Benefits agreement and the successor agreement that the Plaintiff and the other parties who participate in the National Benefits negotiations might arrive at.

35. Paragraph 35 of the Complaint is denied because the Defendants lack the information and knowledge sufficient to enable them to determine the veracity of the averments thereof.

36. Paragraph 36 of the Complaint is denied because the Defendants lack the information and knowledge sufficient to enable them to determine the veracity of the averments thereof.

37. Paragraph 37 of the Complaint is denied because the Defendants lack the information and knowledge sufficient to enable them to determine the veracity of the averments thereof. By way of further answer, the Defendants aver and state that, for the reasons set forth in the other paragraphs of this pleading, all of which are incorporated herein by reference, the alleged trusteeship was and is void ab initio, and was and is of no force and effect.

38. Paragraph 38 of the Complaint is admitted in part and denied in part. It is admitted that the letter described in Paragraph 38 of the Complaint was issued. It is denied that the National President had the right, power and/or authority to take the actions described in the letter because the trusteeship referred to therein was void for the reasons set forth in this pleading, which are incorporated herein by reference.

39. Paragraph 39 of the Complaint is admitted in part and denied in part. It is admitted that the letter referred to in Paragraph 39 of the Complaint was prepared. It is denied that the letter was properly communicated to any of the members and/or officers of Local 537. The office referred to in Paragraph 39 of the Complaint was unoccupied and locked at 9:30AM on March 19, 2018. The aforesaid office was generally unoccupied and locked and was only used as a place to store records and for sporadic meetings, generally on weekends and evenings. The home of the Defendant, J. Kevin Booth, was unoccupied and locked at 1:30PM on March 19, 2018 because Mr. Booth was at work at that time, as was his wife. The other members of his family also were not at the house at that time. Because of the averments of this paragraph, none of the Defendants received any notice of the alleged trusteeship on March 19, 2018 until March 20, 2018.

40. Paragraph 40 of the Complaint is admitted in part and denied in part. It is admitted that representatives of the UWUA appeared at a meeting of the membership of Local 537's Mechanicsburg, Pennsylvania operations in the late afternoon of March 19, 2018 and rendered the information set forth therein. It is further averred that the information and alleged advice were ineffective since the individuals meeting there were meeting for the express purpose of voting upon the question of disaffiliating from the UWUA, which is a purpose that the alleged trusteeship and the trustee was powerless to stop. By way of further averment, the aforesaid meeting in Mechanicsburg was one of over twenty meetings occurring on March 19, 2018 for the purpose of voting upon the question of disaffiliation from the UWUA. Said meetings had started at 6:30AM on March 19, 2018, before any notice of the alleged trusteeship had been communicated to any member or officer of Local 537.

41. Paragraph 41 of the Complaint is admitted but by way of further averment, the aforesaid e-mails were not received until the vote by members of Local 537 to disaffiliate from the UWUA had been completed. The overnight mailings were not received by anyone until March 20, 2018.

42. Paragraph 42 of the Complaint is denied. The Defendants advised the Plaintiff that they believed the trusteeship was void and ineffective but they also advised the Plaintiff, through their legal counsel, that they would comply with the trusteeship preliminarily until this Honorable Court could make a final decision on the validity of the trusteeship and they have always complied with the terms of the trusteeship.

43. Paragraph 43 of the Complaint is admitted but by way of further averment, the communication by Mr. Booth was made before he was made aware of the alleged trusteeship. By way of further averment, the communication by Mr. Booth expressed accurately that the members of Local 537 had voted to disaffiliate from the UWUA and to join an independent union, which they had the right to do, irrespective of the validity of the alleged trusteeship.

44. Paragraph 44 of the Complaint is admitted.

45. Paragraph 45 of the Complaint is denied. The vote referred to therein was not a "name change vote" nor was it a "sham" vote. It was a vote among the members of Local 537 to disaffiliate from the UWUA and to affiliate with a separate labor organization to act as their exclusive collective bargaining representative. It is denied that the disaffiliation vote failed to comply with either the constitution and bylaws of Local 537. That constitution and bylaws do not deal with disaffiliation attempts. The disaffiliation vote complied with the due process requirements of the LMRDA because it was occurred at meetings where secret ballots were conducted upon prior notice to all members.

46. Paragraph 46 of the Complaint is admitted. By way of further averment, the disaffiliation vote began on March 19, 2018 at 6:30AM and was substantially complete before any notice of the alleged trusteeship was received by any member of Local 537. By way of further averment, the imposition of a trusteeship, no matter when it occurred, could not prevent union members from voting to disaffiliate from the UWUA.

47. Paragraph 47 of the Complaint is admitted.

48. Paragraph 48 of the Complaint is admitted in part and denied in part. It is admitted that the requested information was not supplied before the Plaintiff filed this Complaint. It is denied that the information was never provided. The demand for the information that the Plaintiff desired was made in the afternoon of Friday, March 23, 2018 and it was demanded that the information be provided by the close of business on Monday, March 26, 2018. The required information consisted of over 50 separate meeting notices, over 200 separate ballots, several affidavits and a tally of votes conducted at over 25 meetings in three states. The Plaintiff was advised that all said information would be provided to it but that it could not be provided by the March 26, 2018 deadline imposed by the Plaintiff. All said information was provided to the Plaintiff on April 3, 2018, which was as soon as the information could be provided. Said information established that the members of Local 537 overwhelmingly voted to disaffiliate from the UWUA.

49. Paragraph 49 of the Complaint is admitted.

50. The Defendant repeats and realleges all the allegations of Paragraphs 1 through 49 of this pleading and incorporates herein by reference all the following averments of this pleading.

51. Paragraph 51 of the Complaint is denied for all the reasons set forth in this pleading, all of which are incorporated herein by reference.

#### **FIRST DEFENSE**

The National Benefits negotiation process referred to in the Plaintiff's complaint is purely voluntary multi-employer bargaining arrangement from which any entity bound thereby or who benefits therefrom may thereafter lawfully withdraw.

#### **SECOND DEFENSE**

The National Benefit plan which the Plaintiff and American Water have historically negotiated and which remains in force as the culmination of the National Benefits negotiation process referred to in the Plaintiff's complaint specifically permits any entity that benefits by that process or which provides benefits thereunder or which employs or represents individuals who receive benefits to lawfully withdraw from that arrangement.

#### **THIRD DEFENSE**

Participation in the National Benefits negotiations and receipt of the benefits agreed to as part of the National Benefits negotiations is dictated by the terms of each separate collective bargaining agreement arrived at by each specific local labor union which represents employees of each separate American Water Company subsidiary and each such subsidiary. None of these collective bargaining agreements are negotiated by the Plaintiff.

#### **FOURTH DEFENSE**

The terms of various of the separate collective bargaining agreements heretofore arrived at by the Defendant, Local 537 and various of the American Water Company subsidiaries where it is the certified collective bargaining agent permit Local 537 to discontinue appointing the Plaintiff as its representative relative to National Benefits bargaining.



**FIFTH DEFENSE**

The terms of various other of the separate collective bargaining agreements heretofore arrived at by the Defendant, Local 537 and various of the American Water Company subsidiaries where it is the certified collective bargaining agent do not continue the authority of the Plaintiff to act as a representative at National Benefits bargaining beyond the latter of the expiration date of the current National Benefits agreement or the expiration date of the individual collective bargaining agreement.

**SIXTH DEFENSE**

The Utility Workers United Association, Local 537 (“the Association”) is a bona fide labor organization as the term “labor organization” is defined in the LMRA and by the regulations of the National Labor Relations Board. The Association was formed on January 20, 2018 pursuant to procedures previously approved by the National Labor Relations Board.

**SEVENTH DEFENSE**

Pursuant to procedures initiated on January 20, 2018, the process of the members of Local 537 deciding whether to disaffiliate from the UWUA and its Local 537 and to affiliate with a separate labor organization known as the Utility Workers United Association, Local 537 (“the Association”) were properly commenced. These procedures were properly conducted and they were completed successfully on March 19, 2018 with a vote to disaffiliate from the UWUA’s Local 537 and to affiliate with the Association. The commencement of those procedures was known to the UWUA by March 14, 2018. By virtue thereof, the claims of the UWUA as set forth in its complaint fail to state a cause of action against the Defendants.

**EIGHTH DEFENSE**

The imposition of a trusteeship by the UWUA is legally insufficient to prevent or reverse a vote of members of its local union to disaffiliate from the UWUA.

**NINTH DEFENSE**

The commencement and completion of proceedings by the members of Local 537 to disaffiliate from the UWUA and to select the Utility Workers United Association, Local 537 (“the Association”) as the collective bargaining representative of the production, clerical and maintenance employees of Pennsylvania American Water Company, West Virginia American Water Company and Maryland American Water Company raises a question concerning the identity of the exclusive collective bargaining representative of those employees, which is a matter within the sole jurisdiction of the National Labor Relations Board.

**TENTH DEFENSE**

The National Labor Relations Board, through its Region Nine office, has heretofore determined that the Association is a bona fide labor organization separate from the UWUA’s Local 537, that there is a question concerning the representation of the production and maintenance employees of the West Virginia American Water Company’s Huntington District, that the Association is entitled to act as the representative of the production and maintenance employees of West Virginia American Water Company, and that an election among the production and maintenance employees of West Virginia American Water Company should be held to determine whether those employees desire to be represented for purposes of collective bargaining by the Association or by the UWUA’s Local 537.

**ELEVENTH DEFENSE**

Neither the Plaintiff's Constitution and Bylaws nor any duly adopted directive of the Plaintiff requires any of the Plaintiff's local unions to continue to either be bound in futuro by the results of National Benefits bargaining or to continue to appoint the Plaintiff as the representative of its local unions for the purposes of negotiating the benefits contained in the National Benefits agreement.

**TWELFTH DEFENSE**

The Defendants never sought to undermine any collective bargaining arrangement. Rather, they only sought determinations from the National Labor Relations Board regarding the legality of their desire to negotiate issues concerning insurance and retirement benefits on their own behalf rather than having the UWUA negotiate those benefits as the Defendants' representative.

**THIRTEENTH DEFENSE**

The Defendants never disavowed any existing collective bargaining agreement entered into by the Defendant, Local 537 or entered into by the Plaintiff. Rather, they only sought determinations from the National Labor Relations Board regarding the legality of their desire to negotiate issues concerning insurance and retirement benefits on their own behalf rather than having the UWUA negotiate those benefits as the Defendants' representative.

**FOURTEENTH DEFENSE**

On or about April 20, 2018 and again at a hearing of the National Labor Relations Board on May 8, 2018 the Defendants and the Association, through their counsel, advised the attorney for the Plaintiff, and the attorney for the Pennsylvania American Water Company, the West Virginia American Water Company, the Maryland American Water Company, the American

Water Works Company and the American Water Works Service Company that the Association was agreeable to being bound by the current National Benefits Agreement and by the successor agreement to the current National Benefits Agreement that the Plaintiff and the other labor organizations participating in those negotiations might negotiate, and that it would execute that successor agreement on behalf of those of its members employed by subsidiaries of the American Water Works Company who are or who will be represented by the Association for the purpose of collective bargaining. As a result, the reason for the trusteeship is now moot.

**FIFTEENTH DEFENSE**

The imposition of the trusteeship described in Plaintiff's complaint is unlawful and ineffective because the Plaintiff failed to conduct a "fair hearing" relative to the imposition or ratification of the trusteeship as required by the Plaintiff's Constitution and Bylaws and by the terms of the LMDRA.

**SIXTEENTH DEFENSE**

The imposition of the trusteeship described in Plaintiff's complaint is barred by the doctrine of laches since the Plaintiff has known since October 31, 2014 that it was and is the position of the Defendants that Local 537 is able to withdraw the Plaintiff's appointment as its agent for the negotiation of the benefits encompassed by the National Benefits agreement and to negotiate such benefits on its own.

**SEVENTEENTH DEFENSE**

The alleged imposition of the trusteeship described in Plaintiff's complaint occurred after the commencement of the process of disaffiliation of Local 537 as the bargaining agent of the production, maintenance and clerical employees of the Pennsylvania American Water Company, the West Virginia American Water Company, and the Maryland American Water Company.

**EIGHTEENTH DEFENSE**

There was no emergency or exigent circumstance that would have required the Plaintiff to commence a proceeding to place Local 537 in trusteeship on Sunday evening, March 18, 2018 when the Plaintiff was aware as early as October 31, 2014 that it was and is the position of the Defendants that Local 537 was able to withdraw the Plaintiff's appointment as its agent for the negotiation of the benefits encompassed by the National Benefits agreement and to negotiate such benefits on its own. By virtue of additional correspondence to the Plaintiff in April and June of 2016, the aforesaid position of the Defendants that Local 537 was again communicated to the Plaintiff.

**NINETEENTH DEFENSE**

The true reason the Plaintiff decided to impose the trusteeship described in its Complaint was because of the Plaintiff's knowledge that the members of Local 537 were about to decide whether to disaffiliate from the UWUA's Local 537. Imposition of a trusteeship to prevent a disaffiliation is not permitted under the law.

**TWENTIETH DEFENSE**

Local 537 represents nine separate bargaining units consisting of Pennsylvania municipalities and authorities which are not affiliated with American Water Works Company. The employees of those employers represent approximately 15% of the membership of Local 537 and they are all covered by the Pennsylvania Labor Relations Act.

WHEREFORE, the Defendants respectfully request your Honorable Court to do the following:

1. Dismiss the Plaintiff's Complaint in its entirety;

2. Declare the purported trusteeship described in the Plaintiff's complaint to be void and of no force and effect;
3. Require the Plaintiff and its trustee to return to the Defendant Local 537 all the assets, property, and funds which the Plaintiff and its trustee have taken from Defendant Local 537 along with a full inventory and accounting thereof and with interest on any funds and financial assets taken by the Plaintiff and its trustee;
4. Require the Plaintiff to return to the Defendant Local 537 all union dues collected by the Plaintiff and its trustee from employees for whom the Defendant Local 537 was the certified collective bargaining representative, with interest;
5. Award to the Defendants and each of them all costs, expenses and attorney fees incurred by each of them in their defense of this litigation, and
6. Award to the Defendant and each of them any and all other relief to which this Honorable Court deems appropriate under the circumstances.

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By: /s/ Samuel J. Pasquarelli

Samuel J. Pasquarelli, Esquire

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9**

**West Virginia American Water Co.,**

**Employer**

**and**

**Case No. 09-RC-219179**

**Utility Workers United Association, Local 537,**

**Petitioner,**

**and**

**Utility Workers Union of America, AFL-CIO, CLC,  
and its Local 537,**

**Intervenor.**

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing was served by e mail and first class mail on May 25 , 2018, upon:

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c/o Joseph Tansino, Hearing Officer  
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Executed on May 25, 2018

BY: /s/Michael J. Healey, Esq.  
Michael J. Healey, Esq.

A handwritten signature in black ink, appearing to read "MJ Healey", written over the printed name.